



NOTICE OF VIOLATION
NORTH DAKOTA PUBLIC SERVICE COMMISSION
SFN 18099 (10-91)

		N.O.V. Number 1402	
Name of Permittee BNI Coal, Ltd		Permit Number BNCR-1101	
Address 2360 35th Avenue SW	City Center	State ND	Zip Code 58530-9499
Telephone Number 701-794-8734	Mine Center	County Oliver	
Name of Operator (if other than permittee)			
Address	City	State	Zip Code
Date of Inspection September 3, 2014	Time of Inspection From: 9:05	<input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.	To: 3:30 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
<p>Under the authority of North Dakota Century Code Chapter 38-14.1, the undersigned authorized representative of the Commission has conducted an inspection of the above mine on the above date and has found a violation of the statute, rules, permit condition(s), or section(s) of the approved operations and reclamation plan listed on page 2 of this Notice of Violation.</p> <p>You must abate this violation within the designated abatement time.</p> <p>The undersigned authorized representative finds that cessation of surface mining activities <input type="checkbox"/> is <input checked="" type="checkbox"/> is not expressly or implicitly required by this Notice of Violation.</p> <p>This Notice of Violation shall remain in effect until it expires as provided on the reverse side of this page, or is terminated or vacated by written notice by an authorized representative of the Commission.</p>			
Print Name of Person Served Jay M. Volk, Ph. D	Print Title of Person Served Environmental Manager		
Method of Service <input type="checkbox"/> Personal <input checked="" type="checkbox"/> Certified Mail	Date of Service September 9, 2014		
Signature of Person Served	Signature of Authorized Representative <i>Guy Welch</i>		

Nature of Violation

BNI Coal, Ltd. failed to properly mark the permit boundary of Permit BNCR-1101 and they affected lands located outside of the approved permit area. This involved stockpiling topsoil on lands outside the permit area and allowing heavy equipment to travel on a closed county road that is only partially within the permit.

(if applicable, include the extent to which the violation cannot be corrected)

IMPORTANT - PLEASE READ THE REVERSE OF THIS PAGE

Provision(s) of the Statute, Rules, or Permit Violated

NDCC 38-14.1-25(2) prohibits surface coal mining and reclamation operations from being located outside of an approved permit area. NDAC 69-05.2-13-04(4) requires the perimeter of a permit area be clearly marked before beginning surface mining activities.

Portion of the Operation to which this Notice Applies (Include legal description)

Areas along the south and east section lines of Section 6, T141N, R83W, Oliver County, that are adjacent Surface Coal Mining Permit BNCR-1101.

Remedial Action Required (including interim steps, if any)

Remove all topsoil that has been placed on Section 6, conduct the appropriate tillage to alleviate compaction from heavy equipment, and seed the disturbed areas in that section with a mixture that is appropriate for the land use. Place durable permit boundary markers along the boundary of Permit BNCR-1101 and take measures to prevent mining and reclamation operations from being located outside the existing permit boundary. Provide a plan outlining the steps that BNI will take to prevent a similar occurrence from happening in the future.

Time for Abatement (including interim steps, if any)

Mining activities outside the permit boundary must cease immediately and affected areas must be tilled, seeded to an appropriate seed mixture and stabilized by September 19, 2014. Permit boundary markers must be installed around Section 6 and other active areas within Permit BNCR-1101 by September 15, 2014. The plan outlining the steps that BNI will take to prevent a similar occurrence in the future must be submitted by September 30, 2014.

IMPORTANT - PLEASE READ CAREFULLY

1. **MINESITE HEARING.** A Notice of Violation which requires cessation of surface mining activities, expressly or by necessary implication, shall expire within thirty (30) days after it is served unless an informal public minesite hearing has been held at or near the minesite within that time or the hearing has been waived. On the reverse of this page, an authorized representative has made a finding as to whether this Notice requires cessation of surface mining activities. If cessation of mining is required, an informal public minesite hearing will be automatically scheduled by the North Dakota Public Service Commission and will be held within thirty (30) days of the service of this Notice, unless you or your agent waive that hearing in writing.
2. **INFORMAL CONFERENCE.** Notwithstanding the informal minesite hearing provided for in paragraph 1, you must apply for an informal conference with the North Dakota Public Service Commission within thirty (30) days of issuance of this Notice in order to preserve your appeal rights. You may apply for an informal conference by submitting a written request for an informal conference to the North Dakota Public Service Commission within thirty (30) days of issuance of this Notice to you or your agent. The informal conference will be held in the locality of the mine if requested. A stenographic record will be made of the informal conference unless waived by all parties.
3. **FORMAL PUBLIC HEARING.** If you do not desire an informal conference, you may apply for a formal hearing regarding this Notice by submitting a written request for a hearing to the North Dakota Public Service Commission within thirty (30) days of issuance of this Notice to you or your agent. If you do not request an informal conference or a formal public hearing within thirty (30) days, your right to appeal will be forfeited. Please note that you will also have the opportunity to request a formal hearing within thirty (30) days of the decision on the informal conference held under paragraph 2.
4. **TEMPORARY RELIEF.** You have the right to request temporary relief from this Notice pending completion of any investigation and hearing procedures being conducted. A request for temporary relief must be in writing as set forth in subsection 4 of North Dakota Century Code Section 38-14.1-30 and filed with the North Dakota Public Service Commission. The request for temporary relief must include a detailed statement giving reasons why such temporary relief should be granted. The request for an informal conference or a formal public hearing will not stay enforcement of this Notice unless temporary relief is requested and granted.